

REMARKS

Claims 1-18 are pending in the present application. Claim 18 has been allowed. Claims 1-17 have been rejected.

Applicants would like to gratefully acknowledge the indication by the Examiner that claim 18 has been allowed.

Claims 1-6, 9-11 and 13-17 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2003/0174782 A1 ("Papadrias") in view of U.S. Patent No. 6,584,593 B1 ("Seshadri"). Applicants respectfully traverse the rejection as set forth below.

Claim 1 recites "multiple trellis coded modulation scheme".

Applicants respectfully submit that neither Papadrias nor Seshadri, individually or combined, fairly teaches a multiple trellis coded modulation scheme as set forth in claim 1.

In the Office Action, it is evident that Papadrias does not teach multiple trellis coded modulation.

In the Office Action, it is also evident that Seshadri does not teach multiple trellis coded modulation.

If neither Papadrias nor Seshadri teaches multiple trellis coded modulation, then the combination does not teach multiple trellis coded modulation either.

The Examiner in the Office Action appears to give new meaning into the phrase "multiple trellis coded modulation". The Examiner's interpretation is counter to the understanding of the phrase as understood by one of ordinary skill in the art. The Examiner justifies his interpretation by asserting that the phrase is not well known to one skilled in the art or that the term is not commonly used in the art.

"The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." M.P.E.P. § 2142 at page 2100-125 (Rev. 5, Aug. 2006)(italics in the original).

It is the Examiner's assertion that the phrase "multiple trellis coded modulation" is not known or understood by one of ordinary skill in the art.

On what basis did the Examiner come to this conclusion? Applicants respectfully request

that the Examiner meet his initial burden by explaining the basis for his conclusion that the phrase “multiple trellis coded modulation” is not known or understood by one of ordinary skill in the art. Did the Examiner conduct a search for “multiple trellis coded modulation”?

Since this is the basis for justifying the Examiner’s proposed interpretation of “multiple trellis coded modulation”, Applicant would like to review the evidence in support of the Examiner’s conclusion that the phrase “multiple trellis coded modulation” is not known or understood by one of ordinary skill in the art. Until then, Applicant is under no obligation to obligation to submit evidence of nonobviousness under M.P.E.P. § 2142.

In addition, also respectfully request that the Examiner reconsider the use of Seshadri as a basis for an obviousness rejection. In the Appeal Brief that was deemed persuasive, Applicants made a number of arguments and provided evidence from Seshadri that demonstrate that Seshadri teaches away from, for example, the claimed invention as set forth in claim 1 and that Seshadri teaches away from Papadiaz. See, e.g., M.P.E.P. § 2145(X)(D)(1) at page 2100-161 (Rev. 5, Aug. 2006)(“[a] prior art reference that ‘teaches away’ from the claimed invention is a significant factor to be considered in determining obviousness ...”); M.P.E.P. § 2145(X)(D)(2) at page 2100-161 (Rev. 5, Aug. 2006)(“[i]t is improper to combine references where the references teach away from their combination”).

For at least the above reasons, it is respectfully requested that the obviousness rejection based on Papadiaz and Seshadri be withdrawn with respect to claim 1 and its rejected dependent claims (i.e., claims 2-5).

Claims 6, 13, 16 and 17 recite “multiple trellis coded modulation scheme”.

Since the rejection of claims 6, 13, 16 and 17 is based, at least in part, on Papadiaz and Seshadri, the same or similar arguments made with respect to claim 1 are also made, if appropriate, with respect to claims 6, 13, 16 and 17.

For at least the above reasons, it is respectfully requested that the rejection be withdrawn with respect to claims 6, 13, 16 and 17 and their rejected dependent claims (i.e., claims 7-12, 14 and 15).

Claims 7, 8 and 12 also stand rejected as being obvious over at least the combination of Papadiaz in view of Seshadri and thus the arguments made above may also be applicable with respect to claims 7, 8 and 12. It is therefore respectfully requested that the rejection be

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withdrawn with respect to claims 7, 8 and 12.

For at least the above reasons, it is respectfully submitted claims 1-17 are in condition for allowance.

In view of at least the foregoing, it is respectfully submitted that the pending claims 1-18 are in condition for allowance. If anything remains in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, any fee deficiencies and to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

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Respectfully submitted,

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